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November 12, 1996

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Federal Communications Commission
Office of Secretary

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: Telecommunications Services Inside Wiring, Customer Premises Equipment, CS
Docket No. 95-184, Implementation of the Cable Television Consumer Protection
and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260/

Today, the attached letter was sent to JoAnn Lucanik, Chief of the Policy and Rules
Division of the Cable Services Bureau. Please associate this material with the above
referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the
Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me
should you have any questions or require additional information concerning this matter.

Sincerely,



cc: Rick Chessen
Jackie Chorney
John E. Logan
JoAnn Lucanik
Larry Walke

November 12, 1996

JoAnn Lucanik
Chief, Policy and Rules Division
Cable Services Bureau
2033 M Street, N.W., Room 406
Mail Stop 1200
Washington, D.C. 20554

Re: *Telecommunications Services Inside Wiring, Customer Premises Equipment, CS Docket No. 95-184, Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260*

Dear Ms. Lucanik:

We submit this ex parte letter to address questions raised by the staff at a recent ex parte meeting in connection with the inside wire dockets referenced above. We address the following points, all of which limited to the treatment of cable wiring in multiple dwelling units ("MDUs").

As background, we remind you that we advocate moving the MDU cable demarcation point from its present location just outside individual apartments, to a location further from the dwelling units. The new demarc would be located where the common feeder cable meets the wires dedicated to individual subscribers -- e.g., in a lockbox on each floor of a multi-story building -- leaving amplifiers and other electronic equipment on the "network" or "provider" side of the demarc.

This change will effect a change in the ownership of existing cable inside wire. Today, the length of wire from the current demarcation point just outside the apartment may either be owned by the cable company or the occupant of the unit. Under our model, the demarcation point would be moved further away from the unit, and the length of wire between the new demarcation point and the TV set in an apartment would come under the domain of *both the MDU owner and the individual tenant*. The MDU owner will actually *own* the wiring, but the tenant will have the right to *control* the wiring by electing the video provider of his choice.

We explain below how this proposal would work in several respects:

- Timing of compensation for wiring. If the MDU cable inside wire demarcation point is moved, compensation paid to the owner of the wiring (usually the incumbent cable company) may occur after an alternate video provider connects to existing wiring. We set out a schedule for making compensation.

- Calculation of compensation for wiring. The compensation cable owners receive should be offset by accumulated depreciation and other cost recovery the cable companies have already received in the context of cable ratemaking. To give compensation for the full value without this offset would give cable companies double recovery for the cost of inside wiring. This proposal is consistent with what the Commission did with telephone inside wiring.
- Treatment of subscribers who already own their inside wiring. With a change in the demarc, MDU owners should gain the opportunity to own their cable inside wiring, and individual tenants should control that wiring. This position will not disturb situations in which individual subscribers who are tenants have already obtained ownership of their inside wiring pursuant to existing Commission rules.

1. Timing of Compensation

As you know, we advocate moving the MDU cable inside wire demarcation point to the spot where the common feeder cable meets the wires dedicated to individual subscribers, leaving electronic equipment such as taps and amplifiers on the "network" or "provider" side of the demarc. Changing the demarcation point will require the payment of compensation to the current video provider -- whether that provider be the cable company or another video provider. However, alternate video providers should be allowed to connect to existing wiring before compensation is paid, so long as both the incumbent and the alternate provider adhere to the following schedule.

- Day 1: Alternate video provider gives incumbent provider notice of its intent to connect to existing wiring.
- Day 7 or earlier: Incumbent provider gives alternate provider statement of amount of compensation owed for the inside wiring. Failure to do so constitutes conclusive evidence that the cable provider has abandoned the wiring in place to the MDU owner.
- Day 8 or later: Alternate provider may connect to existing wiring.
- Day 97 or earlier: Alternate provider must pay compensation to incumbent provider, unless wiring has been abandoned in place. Alternate provider may arrange by contract or otherwise for a third party (e.g., the MDU owner) to make such payment to the incumbent.

The *obligation to pay* compensation arises as soon as the alternate provider connects to the existing wiring. This schedule simply defers the *payment* itself for a reasonable period of time so that the parties can agree upon the correct amount of compensation. If compensation occurs after the actual taking, interest will adequately compensate the owner of the wiring for the time value of money. See, e.g., U.S. v. Dow, 357 U.S. 17 (1958) (allowing interest to be used to compensate for time value of money between date of “taking” and payment of compensation); U.S. v. 53 1/4 Acres of Land, 176 F.2d 255, 258 (2d Cir. 1949) (same); U.S. v. 147.7646 Miles of Roads, Streets and Highways, 154 F. Supp. 383, 384 (E.D.S.C. 1956) (same).

The Commission should leave as is the existing cable demarcation point in buildings in which no alternative provider seeks access and the owners do not wish to purchase the inside wiring. This will avoid the situation of moving the demarcation and requiring the building owner to compensate the cable company for taking ownership of the wiring even though the building owner does not want the wiring and no competitor wants access to the building. If the building owner affirmatively opts to take title to the inside wiring even though no alternate provider wants access, such election will require the building owner to pay for the wiring. We make this proposal in order to avoid a situation in which rule changes automatically require building owners to pay for wiring that they do not want and to which no alternative video provider seeks access.

Once the building owner or an alternative provider inform the incumbent video provider of their desire to purchase or gain access to the inside wiring, the status of the demarcation point will change and our proposed rules will apply.

2. Calculation of Compensation

The incumbent video provider should receive compensation for the labor and materials attributable to the inside wiring whose ownership transfers to the MDU owner, *but this amount should be offset by any amount the incumbent has already recovered in the ratemaking process, as part of end user charges, or otherwise*. The offset we advocate here is consistent with what the Commission did with telephony inside wiring. When the Commission deregulated such wiring, it agreed that telephone companies were entitled to compensation for the cost of the wiring, but ruled that any accumulated depreciation should be subtracted from the value of the wiring so that telephone companies received only the depreciated value of the wiring. Detariffing the Installation and Maintenance of Inside Wiring, Second Report and Order, CC Docket No. 79-105, 59 RR 2d 1143, 1156-57, ¶ 50 (P&F 1986) (“[W]e are requiring the telephone companies to abandon any claim of ownership in wiring that has been expensed or fully amortized . . .”) (emphasis added).

3. Treatment of Subscribers Who Already Own Their Wiring

We are mindful of the fact that under existing Rule 76.802, individual "subscribers" may opt to purchase their inside wiring -- in this case, wiring extending from 12 inches outside an individual apartment or unit to the TV set itself. We believe the number of subscribers living in MDUs who have actually purchased their inside wiring pursuant to this rule to be quite small. Those subscribers' ownership rights should be grandfathered. However, going forward, an individual MDU *tenant* should either be precluded from owning any of his inside wiring, or should own only wiring inside his apartment or unit, rather than wiring extending outside the unit.

Instead, going forward, the individual tenant should "control" the wiring extending from his TV set to the new demarcation point -- that is, the point where the common feeder meets wiring dedicated to individual units. This change will actually give tenants greater control rather than less control over their video choices. In an MDU, under current rules, a tenant who owns his inside wiring has no choice of video providers because absent agreement between the MDU owner and the cable company, competitors, lacking access from the lockbox to the current demarcation point 12" outside an individual unit, are shut out entirely. Under the rules we propose, on the other hand, giving tenants "control" over their wiring means they can elect the provider they want. The MDU *owner*, who will own the inside wiring under the rules we propose, may impose *reasonable* conditions on a tenant's right to choose providers, but may not bar access altogether.

In conclusion, we believe strongly that a change in the cable demarcation point will vastly enhance video competition in MDUs. We appreciate your attention to our concerns.

Sincerely,

Sarah R. Thomas
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